

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILHELMIA HEARN
Claimant

VS.

CENTRAL KANSAS MEDICAL CENTER
Respondent

AND

RELIANCE INSURANCE COMPANY
Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 163,347

ORDER

ON the 18th day of January, 1994, the application of the respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge George R. Robertson dated December 28, 1993, came on before the Appeals Board for oral argument by telephone conference.

APPEARANCES

Respondent and insurance carrier appeared by their attorney, Richard A. Boeckman, of Great Bend, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Richard L. Friedeman, of Great Bend, Kansas. There were no other appearances.

RECORD

The record before the Appeals Board is the same as that considered by the Administrative Law Judge as stated in the Award of December 28, 1993.

STIPULATIONS

The Appeals Board adopts and incorporates by reference the stipulations set forth by the Administrative Law Judge in the Award of December 28, 1993.

ISSUES

The issues presented by oral argument to the Appeals Board were:

- (1) Whether prior to claimant's work related accident of March 3, 1991, respondent had knowledge of a preexisting physical impairment that would constitute a handicap in claimant's obtaining or retaining employment.
- (2) The liability, if any, of the Kansas Workers Compensation Fund.
- (3) Whether medical management expenses are a proper item subject to reimbursement by the Fund.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) The Appeals Board finds the respondent had knowledge prior to claimant's accident on March 3, 1991, that she had an impairment that constituted a handicap in obtaining or retaining employment.

The Fund contends that respondent lacked knowledge of a preexisting physical impairment as respondent's benefits assistant, Linda Francis, and the head of claimant's department, Larry Metro, did not have personal knowledge of claimant's previous back injuries and resulting physical impairment. The Appeals Board does not agree.

The knowledge obtained by an agent acting within the scope of his authority is, in law, the knowledge of the principal. Holley v. Allen Drilling Co., 241 Kan. 707, 740 P.2d 1077 (1987); Mackey v. Board of County Commissioners, 185 Kan. 139, 341 P.2d 1050 (1959); Hinton v. S.S. Kresge Co., 3 Kan. App. 2d 29, 592 P.2d 471 (1978), rev. denied 225 Kan. 844.

Under K.S.A. 1992 Supp. 44-567, the respondent has the burden of proof that it "knowingly" retained a "handicapped employee." K.S.A. 1992 Supp. 44-566(b) defines "handicapped employee" as one afflicted with an impairment "of such character the impairment constitutes a handicap in obtaining employment."

The documents contained in the personnel files pertaining to claimant establish that claimant was terminated from employment in June, 1974, as she had "broken something in her back" and was hospitalized. The termination slip was signed by a supervisor and department head employed by the respondent. Insurance forms in the personnel files indicate that claimant was injured again in December, 1983, when she slipped on ice while leaving the respondent hospital and sustained compression fractures of the eighth and eleventh thoracic vertebrae. The personnel records also contain a release to work slip dated March, 1984, that released claimant to return to work and required her to wear a brace for six months. Additional insurance forms in the files including a disability insurance form certified by the respondent's Director of Human Resources in March 1984, pertain to claimant's request for credit insurance benefits arising from her inability to work due to the compression fractures of the thoracic spine. From the personnel records, it appears that claimant was off work approximately three and one-half months due to the 1983 back injury.

Based upon the evidence, the Appeals Board finds that agents of respondent, acting within their scope of authority, possessed knowledge of claimant's preexisting back condition that constituted a handicap in her retaining employment. Therefore, as a matter of law, respondent possessed knowledge of claimant's preexisting physical impairment. Respondent's knowledge that claimant had at least two compression fractures in her thoracic vertebrae that prevented her from working for approximately three and one-half months and required her to wear a back brace for six months constituted knowledge of a handicap in her retaining employment.

(2) The Kansas Workers Compensation Fund is liable for 31.57 percent of the cost and compensation paid out pursuant to this injury and award, except those costs identified as medical management expense.

K.S.A. 1992 Supp. 44-567(a)(2) provides:

"Subject to the other provisions of the workers compensation act, whenever a handicapped employee is injured or disabled or dies as a result of an injury and the director finds the injury probably or most likely would have been sustained or suffered without regard to the employee's preexisting physical or mental impairment but the resulting disability or death was contributed to by the preexisting impairment, the director shall determine in a manner which is equitable and reasonable the amount of disability and proportion of the cost of award which is attributable to the employee's preexisting physical or mental impairment, and the amount so found shall be paid from the workers' compensation fund."

The parties stipulated to the admission of the medical records of orthopedic surgeon, Steven Ozanne, M.D. In his letter of December 2, 1992, Dr. Ozanne identifies claimant's preexisting condition to be three previous thoracic compression fractures. Dr. Ozanne believes that six percent (6%) of claimant's current impairment could be attributed to the preexisting condition. In his earlier letter of January 28, 1992, Dr. Ozanne stated that claimant had experienced a nineteen percent (19%) permanent impairment of function to her body as a result of the March, 1991 work related accident.

The Appeals Board finds Dr. Ozanne's opinions to be credible and finds that the Fund is responsible for 31.57 percent of the costs and benefits associated with this proceeding. The 31.57 percent figure was obtained by dividing the preexisting six percent (6%) impairment rating by the nineteen percent (19%) rating that has ultimately resulted.

(3) Medical management costs are not expenses that are subject to reimbursement from the Kansas Workers Compensation Fund. Medical management can be a function of claims adjustment and not medical treatment. As such, there is no provision under the Workers Compensation Act to require reimbursement from the Fund. Medical management can also be nursing care which may be authorized pursuant to Director's Rule 51-9-10. Here the record does not reflect that the medical management expense was incurred as a result of providing nursing care ordered by an authorized treating physician. Therefore, it does not rise to the level of being medical treatment.

AWARD

WHEREFORE, it is the finding, decision and order of this Appeals Board that the Award of Administrative Law Judge George R. Robertson dated December 28, 1993, is reversed and modified, as follows:

WHEREFORE, the Kansas Workers Compensation Fund is ordered to pay and reimburse the respondent and its insurance carrier 31.57 percent of the following amounts, or a total of \$5,573.23.

Temporary Total Disability:	\$ 4,502.39
Medical Benefits:	\$ 4,945.66
Permanent Partial Disability:	\$ 8,000.00
Administrative Costs:	
UNDERWOOD & SHANE Settlement Hearing Transcript, Dated April 6, 1992	\$ 71.20
Deposition of Linda Francis, Dated September 20, 1993	\$ 99.30
Special Administrative Law Judge Fee:	\$ 35.00
GRAND TOTAL	\$17,653.55

IT IS SO ORDERED.

Dated and mailed this ____ day of January, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: George R. Robertson, Administrative Law Judge
Richard A. Boeckman, P.O. Box 459, Great Bend, Kansas 67530
Richard L. Friedeman, P.O. Box 1110, Great Bend, Kansas 67530-1110
George Gomez, Director